AN FTC GUIDE TO

Single Firm Conduct

Tying the Sale of Two Products

OFFERING PRODUCTS TOGETHER AS PART OF A PACKAGE can benefit consumers who like the convenience of buying several items at the same time. Offering products together can also reduce the manufacturer's costs for packaging, shipping, and promoting the products. Of course, some consumers might prefer to buy products separately, and when they are offered only as part of a package, it can be more difficult for consumers to buy only what they want.

FOR COMPETITIVE PURPOSES, a monopolist may use forced buying, or "tie-in" sales, to gain sales in other markets where it is not dominant and to make it more difficult for rivals in those markets to obtain sales. This may limit consumer choice for buyers wanting to purchase one ("tying") product by forcing them to also buy a second ("tied") product as well. Typically, the "tied" product may be a less desirable one that the buyer might not purchase unless required to do so, or may prefer to get from a different seller. If the seller offering the tied products has sufficient market power in the "tying" product, these arrangements can violate the antitrust laws.

The law on tying is changing. Although the Supreme Court has treated some tie-ins as per se illegal in the past, lower courts have started to apply the more flexible "rule of reason" to assess the competitive effects of tied sales. Cases turn on particular factual settings, but the general rule is that tying products raises antitrust questions when it restricts competition without providing benefits to consumers.

EXAMPLE: The FTC challenged a drug maker that required patients to purchase its blood-monitoring services along with its medicine to treat schizophrenia. The drug maker was the only producer of the medicine, but there were many companies capable of providing blood-monitoring services to patients using the drug. The FTC claimed that tying the drug and the monitoring services together raised the price of that medical treatment and prevented independent providers from monitoring patients taking the drug. The drug maker settled the charges by agreeing not to prevent other companies from providing blood-monitoring services.

ILLEGAL MONOPOLIZATION MAY INCLUDE SUCH THINGS AS EXCLUSIVE SUPPLY OR PURCHASE AGREEMENTS, TYING THE SALE OF TWO PRODUCTS, PREDATORY PRICING, REFUSAL TO DEAL.